

had been reversed 27 out of 28 times by the U.S. Supreme Court, I believe, the year before that and consistently was the most reversed court in America. Those two nominees, Berzon and Paez, which I strongly opposed—and I think a review of their record would show they have been activist and should not have been confirmed. But Orrin Hatch said in our Republican conference: No, let's don't filibuster judges; that is wrong.

I was a new Member of the Senate, as the Senator from California said she was. He stepped up and said: Don't filibuster. We need to give them an up-or-down vote. The then-majority leader, TRENT LOTT, moved for cloture to give them an up-or-down vote. I voted to give Berzon and Paez an up-or-down vote, and we did that. We invoked cloture, brought them up. The Republican majority brought up the Clinton nominees, and we voted them up. They were both confirmed, and they are both on the bench today.

Our record was one that rejected filibusters. Now, what happened after all of this occurred? It was a huge alteration of the Senate's tradition and, I think, the constitutional intent. I think the Constitution is clear that a majority is what we were looking for. So we were faced with a difficult decision of what to do and how to handle it.

I compliment Senator BILL FRIST, the majority leader of the Senate. He systematically raised this issue with the leadership on the other side. He provided every opportunity to debate these nominees so that nobody could say they didn't have a full opportunity to debate. He researched the history of the Senate, and he presented positions on it and why the filibuster on judicial nominees was against our history. He urged us to reach an accord and compromise. All we heard was no, no, no, you are giving a warm kiss to the far right, you are taking steps that are extreme, you are approving extreme nominees, people who should not be on the bench, and we are not going to compromise and we are not going to talk to you.

After considerable effort and determination and commitment to prin-

ciple, Senator FRIST moved us into a position to execute the constitutional option, also referred to as the nuclear option. It has been utilized, as he demonstrated, many times by majority leaders in the past. It is not something that should be done lightly, but it is certainly an approved historical technique that has been used in this Senate. As a result of that, and the fact that they were facing a challenge, I think it was at that point we began to have movement on the other side, and they realized this deal was not going to continue as it was and that, under the leadership of Senator FRIST, we were not going to continue this unprecedented, unhistorical action of filibustering judicial nominees.

So it was out of that that we had the agreement that was reached today. With that constitutional option hanging over the heads of a number of people, a serious reconsideration took place. I think a number of Senators on the other side have been uneasy about this filibuster. They have not felt comfortable with it, but it was leadership-led and difficult, apparently, for them to not go along. Although, I have to note that Senator Zell Miller and BEN NELSON consistently opposed it and supported the Republican nominees each and every time as they came forward.

So out of all of this, we have reached an accord tonight. It has led to what appears to be a guarantee that three nominees, at least—Priscilla Owen, Janice Rogers Brown, and William Pryor, who is sitting now as a recess appointee on the Eleventh Circuit—will get an up-or-down vote. I believe all three of them will, and should be, rightfully, confirmed as members of the court of appeals of the United States of America. They will serve with great distinction. I am sorry we don't have that same confidence that Judge Saad or Judge Myers will also get a vote. They may or may not, apparently. But we don't have the same confidence from this agreement that they will. I think they deserve an up-or-down vote also. But today's agreement was a big step forward.

Maybe we can go forward now and set aside some of the things of the past, and we will see Members of the other side adhere to the view of those who signed the agreement that a filibuster should not be executed except under extraordinary circumstances. Certainly, that is contrary to the position that they were taking a few months ago and certainly the position being taken last year.

So progress has been made. I salute particularly the majority leader who I believe, through his leadership and consistency, led to this result today. I am thrilled for Judge Pryor and his family because I know him, I respect him, and I know he will be a great judge. I am excited for his future.

Mr. President, seeing no other Senator here, I yield the floor.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:45 a.m. tomorrow.

Thereupon, the Senate, at 10:13 p.m., adjourned until Tuesday, May 24, 2005, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate May 23, 2005:

DEPARTMENT OF EDUCATION

TOME LUCE, OF TEXAS, TO BE ASSISTANT SECRETARY FOR PLANNING, EVALUATION, AND POLICY DEVELOPMENT, DEPARTMENT OF EDUCATION, VICE BRUNO VICTOR MANNO, RESIGNED.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ARLENE HOLEN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM EXPIRING AUGUST 30, 2010, VICE ROBERT H. BEATTY, JR., TERM EXPIRED.

DEPARTMENT OF JUSTICE

ROD J. ROSENSTEIN, OF MARYLAND, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF MARYLAND FOR THE TERM OF FOUR YEARS, VICE THOMAS M. DIBIAGIO.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ERIC T. OLSON, 0000